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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BEISNER, WILLIAM H

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,950

Applicant(s)

BALBI ET AL.

Examiner

William H. Beisner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4-7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Murayama et al.(EP 831 384).

With respect to claim 1, the reference of Murayama et al. discloses a device for diffusing perfumes in synchronism with information presented to a user comprising a receptacle (100) into which are placed means (101-n) for storing samples of perfume and which is fitted with means (102-n, 107, 108, 109) for the selective contacting of a sample with ambient air under the direction of control means (106) wherein the control means (106 and/or 401) includes means for storing (computer memory) an algorithm for controlling the operation of the selective contacting means as a function of the information presented to the user (See column 5, lines 19-27). The memory of the controller (401) can receive the algorithm via downloading from an electronic device (402) (See column 6, lines 11-16). Also note the reference discloses that the controller within the device can also include a memory (1603, 1604) for storing an algorithm from an external device (See column 12, lines 5-11).

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With respect to claim 4, the device includes a socket (105) for connecting the device to an output of an electronic appliance (401, 501, 601). Also the computer (401) also includes sockets for connecting the computer to electronic device (402).

With respect to claim 5, the reference discloses using the device in a manner as recited in claim 5. That is, the emission of perfume by the device is linked to the audio/visual stimuli presented to the user (See column 5, line 49, to column 6, line 50). The process includes the step of downloading olfactory data form electronic device (402) to local computer (401). Also the local computer can be located within the device as disclosed in Figure 17.

With respect to claims 6 and 7, the device is operated by the controller (106, 401) in the manner as recited in claims 6 and 7 (See column 5, lines 19-27).

With respect to claim 9, the control algorithm can be downloaded from a host computer (402) via an internet link (See column 5, line 49, to column 6, line 28).

With respect to claim 10, the control algorithm can be downloaded from a TV broadcast signal (See column 6, lines 29-50).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 2, 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murayama et al.(EP 831 384) in view of De Sousa (WO 97/37693)..

The reference of Murayama et al. has been discussed above.

Claim 2 differs by reciting that the perfume storage device is a rotary disk that operates with a motor device to position one of the perfume reservoirs for exposure to environmental air.

The reference of De Sousa discloses a device for selectively exposing a plurality of reservoirs of perfume to environmental air in response to control signals wherein the perfume reservoirs (16) are carried on a removable rotary disk (15) which is positioned with motor (13).

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In view of this teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a perfume disk as disclosed by the reference of De Sousa in the system of the primary reference for the known and expected result of providing an alternative means recognized in the art to achieve the same result, selectively exposing a plurality of perfume containing reservoirs to environmental air. The removable disk allows different reservoirs of perfume to be easily replaced with respect to the rest of the device.

With respect to claim 3, the reference of De Sousa additionally discloses that the reservoirs for the perfume are frangible cells (See page 6, lines 1-3).

With respect to claim 8, while the reference of Murayama et al. disclosed downloading the control algorithm from a computer or TV, claim 8 differs by reciting the use of a CD-ROM.

The reference of De Sousa discloses that control signals can originate from a variety of devices including TV, videotape or CD-ROM (See page 1, lines 4-14).

In view of this teaching, it would have been obvious to one of ordinary skill in the art to provide the control algorithm using a CD-ROM for the known and expected result of providing an alternative means recognized in the art to achieve the same result, providing the control algorithm required to associate an audio/video stimuli with a predetermined perfume sequence.

Response to Arguments

7. With respect to the rejection of the claims under 35 USC 102 and/or 103 over the reference of Marayama et al. alone or further in view of the reference of De Sousa et al, Applicants argue (See pages 6-9 of the response dated 12/16/05) that the rejection is improper for the following reasons:

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Claims 1 and 5 differ from either of the references of Marayama et al. or De Sousa et al. in the integration of storage means for diffusing perfumes that are adapted to receive a control algorithm by downloading from an electronic device.

In response, the Examiner is of the position that the reference of Marayama et al. discloses a storage means that meets the instant claim language. Specifically, computer (401) includes a storage means that receives a control algorithm from an electronic device (402) (See column 5, line 49, to column 6, line 17). Also, the reference also discloses that a storage means (1603,1604) for the control algorithm can be provided within the device (1401) wherein the device is interfaced with other input devices or a network for inputting aroma release information (See column 12, lines 5-9).

Applicants argue that the term algorithm defines over a control signal which is disclosed by the reference of Marayama et al.

With respect to Applicants' comments concerning the definition of an algorithm, the step of downloading olfactory data to the local computer or controller (See column 6, lines 11-17) is considered to meet the step of downloading an algorithm. While the reference of Marayama et al. generates a control signal, this signal is generated by the algorithm stored in device (401) or internal device (1603, 1604).

Applicants argue that the reference of De Sousa does not disclose downloading a control algorithm as is required of the instant claims.

In response, the reference of De Sousa was relied upon as a secondary reference to address the additional claim limitations of dependent claims 2, 3 and 8. For reasons already

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expressed above, the Examiner is of the position that the reference of Marayama et al. meets the claim limitations of claims 1 and 5.

Applicants argue that the reference of Murayama et al. does not mention the ability of the disclosed device to receive a controlling algorithm by downloading.

In response, the reference discloses that computer (401) and memory (1603, 1604) are both capable of receiving a controlling algorithm by downloading (See column 5, line 49, to column 6, line 17; and column 12, lines 5-9).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


William H. Beisner
Primary Examiner
Art Unit 1744

WHB